

# **Memorandum of Understanding**

## **The Information Commissioner and Smart Energy Code Company Limited**

### **Introduction**

1. This Memorandum of Understanding (MoU) establishes a framework for co-operation and information sharing between Smart Energy Code Company Limited (SECCo) and the Information Commissioner (the Commissioner) in connection with the sharing of relevant information and intelligence, set out at 14 below. It sets out the role of each organisation and documents the practical working level arrangements between the Commissioner and SECCo.
2. The Commissioner and SECCo will monitor the operation of this memorandum and will review it, initially after six months from the date of this document, and subsequently from time to time as necessary.
3. Any changes to this memorandum identified between reviews may be agreed in writing between the parties.
4. Any issues arising in relation to this memorandum will be notified to the point of contact for each organisation (referred to in 27 below).
5. This memorandum is a statement of intent that does not give rise to legally binding obligations on the part of either the Commissioner or SECCo.

### **Functions and powers of Commissioner**

6. The Commissioner is a corporation solely appointed by Her Majesty the Queen under the Data Protection Act 1998 and Freedom of Information Act 2000 to act as the UK's independent regulator promoting public access to official information and protecting personal data.
7. The Commissioner regulates the Data Protection Act 1998 (DPA), the Freedom of Information Act 2000 (FOIA), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (PECR), the Environmental Information Regulations 2004 (EIR) and the INSPIRE Regulations 2009.

8. Section 51 of the DPA places a duty on the Commissioner to promote the following of good practice by data controllers and the observance of the requirements of the DPA by organisations.
9. Where the Commissioner is satisfied that any of the data protection principles or certain provisions of PECR have been breached, a number of steps can be taken to seek to change the behaviour of the organisation including:
  - serving information notices requiring organisations to provide the Information Commissioner's Office with specified information within a certain time period;
  - issuing undertakings committing an organisation to a particular course of action in order to improve its compliance;
  - serving enforcement notices where there has been a breach, requiring organisations to take (or refrain from taking) specified steps in order to ensure they comply with the law;
  - conducting consensual assessments to check organisations are complying; and
  - issuing monetary penalty notices, requiring organisations to pay up to £500,000 for serious breaches.
10. The Commissioner may also prosecute those who commit criminal offences under the DPA.

### **Functions of SECCo**

11. SECCo is the corporate vehicle established to support the Smart Energy Code Panel business. All contracts with the Smart Energy Code Panel are held with SECCo.
12. The Smart Energy Code Panel has been established in order to undertake the duties set out within the Smart Energy Code. This includes appointing an Independent Privacy Auditor who will undertake Privacy Assessments of Users of the Data Communications Company who may be granted access to Smart Metering Systems where they are not the Registered Supplier or Registered Network Operator. The assessment process is outlined in Section I2 of the SEC and verifies that the User is compliant with the SEC and has systems and processes in place to comply with their obligations.
13. The Smart Energy Code places a duty on the Smart Energy Code Panel to review the outcome of the Privacy Assessments and set the Assurance Status and determine the appropriate course of action.

14. Where the Smart Energy Code Panel is satisfied that an actual or perceived material non-compliance has been identified by the Data Privacy Auditor, a number of steps can be taken to seek to change the behaviour of the User including:
- seeking additional information from the Independent Privacy Auditor;
  - seeking additional information from the User;
  - setting the Assurance Status to deferred to stop the User from communicating remotely with Smart Meters via the Data Communications Company; and
  - in the event of an actual non-compliance provide the Information Commissioner with a report detailing the findings and actions taken to date.

### **Cooperation between the Commissioner and SECCo**

15. Subject to any legal restrictions on the disclosure of information (whether imposed by statute or otherwise) and at their discretion, SECCo agree that they will alert the Commissioner to any potential breaches of the legislation he regulates discovered whilst undertaking their duties, and provide relevant supporting information and intelligence.
16. Subject to any legal restrictions on the disclosure of information (whether imposed by statute or otherwise) and his discretion, the Commissioner agrees that he will alert SECCo to any potential breaches of best practice, or information relevant to the functions set out at 11 to 14 above, discovered whilst undertaking his duties, and provide relevant supporting information.
17. Subject to any legal restrictions on the disclosure of information (whether imposed by statute or otherwise) and at their discretion, both parties will:
- a) Communicate regularly to discuss matters of mutual interest (this may involve participating in multi-agency groups to address common issues and threats); and
  - b) Consult one another on any issues which might have significant implications for the other organisation.

## **Sharing information**

18. Subject to any disclosure restrictions applicable to SECCo, they may disclose confidential information to the Commissioner to facilitate the carrying out of any required function of the Commissioner or a statutory function of the Commissioner, as set out in 8, 9 and 10 above.
19. Where SECCo wishes to disclose to the Commissioner information necessary for the discharge by the Commissioner of his functions under the DPA (or under FOIA), section 58 DPA provides that no enactment or rule of law prohibiting or restricting the disclosure of information shall preclude SECCo from furnishing such information to the Commissioner.
20. In respect of information obtained by or furnished to the Commissioner for the purposes of his functions under the Information Acts, it is an offence under section 59 DPA for any current or former member of the Commissioner's staff or his agent to disclose such information without lawful authority.
21. Section 59(2)(e) DPA provides that a disclosure by the Information Commissioner of information obtained by or furnished to him is made with lawful authority where, having regard to the rights and freedoms or legitimate interests of any person, the disclosure is necessary in the public interest.
22. Section 59(2)(c) of the DPA provides that a disclosure by the Information Commissioner of information obtained by or furnished to him is made with lawful authority where the disclosure is made for the purposes of, and necessary for, the discharge of any functions under the Information Acts.
23. In addition, section 59(2)(d) DPA provides that a disclosure of information by the Information Commissioner is made with lawful authority where the disclosure is made for the purposes of any proceedings, whether criminal or civil.
24. The Commissioner may, at his discretion and in accordance with sub-sections 59(2)(c), (d) and/or (e) DPA, disclose confidential information to SECCo, where this is necessary for performing the functions set out at 6 to 10 above.
25. If information to be disclosed by the Information Commissioner was received by him in the course of discharging his functions as a designated enforcer under the Enterprise Act 2002, any disclosure

shall be made in accordance with the restrictions set out in Part 9 of that Act.

26. Where a request for information is received by either party under the DPA, FOIA or EIR, the recipient of the request will seek the views of the other party where the information being sought under the request includes information obtained from, or shared by, the other party. However the decision to disclose or withhold the information remains with the recipient party.

### Points of contact

27.

SECCo	Information Commissioner
Sarah Gratte, Senior Delivery Manager – SMART	Adam Stevens, Intelligence Hub Manager
Gemserv 8 Fenchurch Place London EC3M 4AJ	Wycliffe House Water Lane Wilmslow SK9 5AF

**SECCo**

**Information Commissioner**



(Signature)

(Signature)

(Peter Davies, SECCo Chairman)

CHRISTOPHER GRATHAM  
INFORMATION COMMISSIONER  
(Name and title)

(Date) 18/2/16

(Date) 16/3/16

